

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.6149 of 1998

Between:

The Depot Manager, A.P.S.R.T.C., Bodhan depot,
Nizamabad Dist.

..... PETITIONER

AND

- 1 Y.R.D. Goud, Ex.Conductor, S/o.Sri Anja Goud,
Nayabadi, Tadepally, Nizamabad - 503 202.
- 2 The Labour Court-II. rep. by Presiding Officer.
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue any appropriate writ, order or direction particularly in the nature of a writ of certiorari calling for the records pertaining to the award of the Labour Court-II. A.P., Hyderabad in I.D.No.39/93 dated 21.12.1996 and published on 5.6.1997 and quash the same as being illegal arbitrary and unjust.

Counsel for the Petitioner : Mrs.A.VYJAYANTHI,

S.C. FOR APSRTC.

Counsel for Respondent No.1 : Mr.V.Narasimha Goud

Counsel for Respondent No.2: Govt. Pleader for Labour.

The Court made the following :

ORAL ORDER:

The petitioner management filed this writ petition aggrieved by an Award passed by the Labour Court-II, Hyderabad, in I.D.No.39 of 1993 dated 21-12-1996 (published on 5-6-1997). Respondent No.1-workman was appointed as a Conductor in the service of the petitioner Corporation on 6-5-1998. While he was conducting bus from Bodhan to Kopergaon on 1-9-1990, a check was exercised at Stage No.2/3. The checking officials found that though respondent No.1 workman collected the requisite fare failed to issue tickets. A charge memo was issued on the spot. On the basis of the charge memo, a charge sheet was issued and explanation was called for. Having not satisfied with the same, a detailed enquiry was conducted and the disciplinary authority came to the conclusion that the respondent workman is liable to be removed from service and accordingly passed final orders on 17-6-1991 removing him from the service of the Corporation. Aggrieved by the same, respondent workman filed an appeal and the same was dismissed on 7-9-1991. Review Petition preferred by the respondent workman was also dismissed on 7-10-1992. Ultimately, the respondent workman raised a dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') before the Labour Court-II, Hyderabad, second respondent herein, in I.D.No.39 of 1993. The petitioner management had filed its counter. Before the Labour Court, no oral evidence was let in by both the parties. On behalf of the workman no documents were marked. However, on behalf of the petitioner management, Exs.M1 to M18 were marked. After appreciation of the entire evidence on record, the Labour Court came to the conclusion that the findings recorded by the Enquiry Officer and the disciplinary authority cannot be faulted with. However, while exercising its powers under Section 11-A of the Act, the Labour Court held that taking into consideration the totality of the facts and circumstances and having regard to the nature of the irregularities committed and the paltry sum involved, it is abundantly clear that punishment of removal was very harsh, disproportionate and the respondents have not followed the principle of proportionality correctly and thus set aside the removal order and directed the management to reinstate the respondent workman into service with all attendant benefits, continuity of service and with 25% back wages.

Heard both the counsel.

Learned counsel for the petitioner management submitted that the principle of proportionality applied by the Labour Court in this particular case is erroneous, and

while upholding the finding of misconduct alleged against the workman, ought not to have directed reinstatement with all attendant benefits and continuity of service while exercising its powers under Section 11-A of the Act. He contended that in the given circumstances of the case, the misconduct committed was serious in nature and the Labour Court ought not to have granted any relief at all. The misconduct alleged was that the respondent workman having collected the requisite fare from three individual passengers, failed to issue tickets. Once this charge is proved, the Labour Court ought not to have held that since paltry sum was involved, the principle of proportionality was not properly applied by the management.

Per contra, learned counsel for first respondent workman contended that the Labour Court rightly found that the principle of proportionality was not followed by the management and having regard to the misconduct alleged and the paltry sum involved, the Award of the Labour Court giving relief to the workman by exercising the discretionary power under Section 11-A of the Act cannot be faulted. In such like matters, this Court may not interfere while exercising power under Article 226 of the Constitution of India.

I have gone through the entire record. The duty of the Conductor is to collect fare and issue tickets. In this case, though the workman collected the requisite fare at the boarding point itself and though the bus travelled for more than two stages, he failed to issue tickets. Absolutely there was no explanation for this and the Enquiry Officer and the disciplinary authority found that the charges are proved. This is a very serious misconduct on the part of the Conductor in performing his duties. Though I am in full agreement with the counsel for the petitioner, however, in view of the fact that the petitioner was already reinstated into service in pursuance of the Award passed by the Labour Court on 21-12-1996, it may not be proper for this Court to reverse the same in its totality. I am of the opinion that the Award of the Labour Court is liable to be modified and is accordingly modified as under.

“The workman (respondent No.1) is entitled for reinstatement with continuity of service, but without back wages and other attendant benefits.”

I am informed that the respondent workman has not been paid back wages. However, in view of the interim orders, half of the amount was deposited and the

same is lying to the account of the I.D. before the Labour Court. The Labour Court is directed to refund the amounts deposited by the management forthwith. Insofar as the payments if any made to the respondent workman in pursuance of the Award of the Labour Court as to attendant benefits etc., the management is at liberty to recover the same from the workman.

The writ petition is allowed to the extent indicated above. No costs.

_____ (C.V.RAMULU, J.)

4th November 2004.

ARS

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

THURSDAY the FOURTH day of NOVEMBER TWO THOUSAND AND FOUR.

To

1. The Presiding Officer, Labour Court-II, Hyderabad.
2. The Depot Manager, A.P.S.R.T.C., Bodhan depot,
Nizamabad Dist.

3 Two CD copies.